

# EXHIBIT H

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TENNESSEE

DANIEL LOVELACE and  
HELEN LOVELACE, Individually  
and as Parents of BRETT  
LOVELACE, Deceased,

Plaintiff,

v. Case Number 2:13-cv-02289

PEDIATRIC ANESTHESIOLOGISTS,  
P.A., BABU RAO PAIDIPALLI, and  
MARK P. CLEMONS,

Defendant.

VIDEOTAPE DEPOSITION

OF

KELLY KISH

May 15, 2014

JILL W. HODGES, RPR, LCR #380  
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R I V E R S I D E   R E P O R T I N G

1 COWS, computer on wheels. And so I was sitting  
2 beside him probably not as far away as the feet  
3 but between his hips and his feet to the right --  
4 if I'm looking this way and he's right here,  
5 family was on the left, and I was on the right.

6 Q. Was anybody else in the room with you  
7 other than the two parents?

8 A. No.

9 Q. Other than the occasion that Dr. Clemons  
10 came through, do you recall any other physicians  
11 or any other medical personnel coming to Brett  
12 Lovelace's room?

13 A. I don't remember.

14 Q. At any point in time during that 90  
15 minute period -- and what I'm talking about when  
16 I say 90 minute period is the time you received  
17 Brett Lovelace in the PACU and the time the code  
18 was called, at any other point in time during  
19 that 90 minute period did you call for assistance  
20 from a physician?

21 A. No.

22 Q. Did you call for assistance from any  
23 other medical personnel other than the two  
24 occasions that you had somebody keep an eye on

1 Q. Is that typically how it happens or how  
2 it would work? Was it a one-to-one ratio?

3 A. We could have two patients. It would  
4 just depend on how many patients were coming out  
5 at that time, what the staffing was.

6 Q. But your only patient on March 12 was  
7 Brett Lovelace, correct?

8 A. Correct.

9 Q. At any point in time during that 90  
10 minute period if you had needed help or  
11 assistance with regard to treating Brett  
12 Lovelace, did you have a chain of command that  
13 you could go up or did you have somebody that you  
14 could ask to come help you?

15 A. Oh, yes, yes.

16 Q. Did you ever feel the need before you  
17 called the code to ask anybody to assist you?

18 A. No, I didn't. No, I didn't.

19 Q. Okay. Would you have had a charge nurse  
20 that day?

21 A. Yes.

22 Q. Do you recall who the charge nurse was?

23 A. It was -- Carry Fowler was the charge  
24 nurse.

1 other children. You know, I mean, we do that  
2 with parents. We'll just -- while the kids, you  
3 know, are sleeping it off, we'll talk, chit-chat.

4 You know, I mean, that's common. That's  
5 not anything out of the ordinary to just talk  
6 about things or where they lived. I knew they  
7 lived in Arkansas because I believe I used my  
8 cell phone to call the pharmacy because it was a  
9 long distance number if I remember correctly.

10 So, you know, and then I explained to  
11 her, you know, that it would be ready, that way  
12 they could go to the drive-through and get it,  
13 you know, the teaching that we do for post-op  
14 tonsillectomies.

15 Q. Do you recall the parents asking you any  
16 questions or voicing any concerns about their  
17 child during that time period?

18 A. I don't recall -- I don't remember  
19 any.

20 Q. Do you recall any discussions with the  
21 parents about the position that Brett Lovelace  
22 was sleeping in?

23 A. I don't recall any. We didn't -- you  
24 know, that was his comfortable position he went

1 to, and so there was really -- we didn't as far  
2 as I remember discuss that position at all.

3 Q. Did you discuss the snoring specifically  
4 with the parents?

5 A. We did. We did talk about that.

6 Q. And what did y'all talk about?

7 A. I asked mom if he was a snorer at home,  
8 and she said, yes, a bad snorer. And then, you  
9 know, when Dr. Clemons came in, you know, we  
10 talked more about the snoring and what the  
11 outcome would be post-op, you know, when he got  
12 home, that it would not be as much, you know, he  
13 would not snore as near as bad and he would sleep  
14 better.

15 Q. Do you recall doing anything to help or  
16 try to arouse Brett Lovelace out of his  
17 anesthesia, like moving his legs or touching his  
18 arms?

19 A. No, I didn't. I do not -- I did not.

20 Q. Is that something --

21 A. I don't remember.

22 Q. You don't remember doing that?

23 A. I don't remember doing that.

24 Q. Is that something that you're supposed

1 in --

2 Q. In your experience, did you have  
3 experience with pre-teens or young teenagers that  
4 had come to PACU that had been combative when  
5 they initially arrived?

6 A. Only a very few had really been as  
7 combative as he was.

8 Q. Did you feel the combativeness made you-  
9 uncomfortable with taking care of the patient?

10 A. No.

11 Q. When the patient -- when you accepted  
12 the patient in the PACU, do you agree that the  
13 responsibility for that patient's care  
14 transferred to you?

15 MR. LEDBETTER: Object as to it  
16 being a legal issue.

17 Q. (By Mr. Gilmer) Is that what your --  
18 that's fine. We make lawyer comments during  
19 these depositions.

20 A. Okay.

21 Q. Do you agree that when you accepted  
22 transfer of this patient, he became your  
23 responsibility?

24 A. I do.

1 Q. And that if you felt that you were over  
2 your head that you would need to notify somebody?

3 A. Correct.

4 Q. And that if you had accepted this  
5 patient and believed that the doctor or the CRNA  
6 had no business putting the patient in the PACU,  
7 you could have invoked your chain of command?

8 MR. LEDBETTER: Object as to form.

9 A. Correct.

10 Q. You had a chain of command, right?

11 A. Right.

12 Q. And if you believed that a doctor was  
13 doing something inappropriate, you could have  
14 invoked that chain?

15 A. Correct.

16 Q. Okay. And you did not do that with  
17 Brett, right?

18 A. I did not.

19 Q. Did you ever speak to Dr. Paidipalli?

20 A. I did not.

21 Q. Would you recognize Dr. Paidipalli?

22 A. (Witness nods head).

23 Q. Is that a yes?

24 A. Yes, that's a yes.



1 (Discussion Off The Record)

2 THE VIDEOGRAPHER: We're back on  
3 the record at 4:03.

4 Q. (By Mr. Gilmer) When the patient was  
5 transferred from the operating room to the PACU,  
6 he had supplemental oxygen, didn't he?

7 A. No.

8 Q. He didn't?

9 A. He did not.

10 Q. Do you recall him being placed on -- any  
11 supplemental oxygen being given to the patient?

12 A. I can't remember.

13 Q. If other people in the case had  
14 testified that he did have supplemental O2, would  
15 you dispute that?

16 MR. LEDBETTER: I'm going to object  
17 to the form of the question and object  
18 also to the fact that it lacks any  
19 factual underpinning; in other words,  
20 it's not true.

21 Q. (By Mr. Gilmer) Do you have any -- is  
22 it -- what is the procedure that you're familiar  
23 with in the PACU as far as supplemental O2?

24 MS. MAGEE: Can I object to the

1 objection?

2 THE WITNESS: Is it my turn?

3 MR. TALLEY: It's your turn.

4 A. What's the question?

5 Q. The question was was there a standard  
6 procedure in the PACU concerning supplemental  
7 O2?

8 A. There is.

9 Q. What was that?

10 A. If -- depending on what their O2 sats  
11 are, less than 92 or so you would put on oxygen,  
12 but they didn't know what his O2 sat was because  
13 he didn't have a pulse ox on when he came to  
14 me.

15 Q. And at any point did you have the  
16 ability to put him on supplemental O2?

17 A. Yes.

18 Q. Did you do that?

19 A. I don't remember. I don't remember if  
20 he had a bag and mask when he came to me, because  
21 normally what we'll do is plug the oxygen tubing  
22 up to the oxygen on the wall. And then depending  
23 how old they are, if they need it, you know,  
24 we'll just let it blow toward their face,

1 bedside and speak to the parents and observe the  
2 patient.

3 Now, whether he came and saw them on his  
4 way out, I don't have any idea.

5 Q. You have no reason to dispute that if  
6 that's his testimony, correct?

7 A. Correct.

8 Q. Okay. Now, you testified earlier today  
9 that you were the individual in charge of  
10 monitoring Brett Lovelace while he was in the  
11 PACU, is that correct?

12 A. That's correct.

13 Q. In your nursing judgment if you believed  
14 that the patient needed to be turned from the  
15 prone position to the supine position you  
16 could have done that, correct?

17 A. Correct.

18 Q. And at no point did you do that,  
19 correct?

20 A. Correct.

21 Q. At no point did you feel like you needed  
22 to contact anybody and ask for assistance, is  
23 that correct?

24 A. Correct.

1 Q. If you had needed to contact somebody  
2 and request assistance with regard to, let's say,  
3 Brett's oxygenation status, you could have done  
4 that, is that correct?

5 A. Correct.

6 Q. And you didn't do that, correct?

7 A. Correct.

8 Q. Dr. Paidipalli, as you testified when  
9 Mr. Ledbetter was asking you questions, he was at  
10 the hospital and he was available if you had  
11 contacted him, correct?

12 MR. LEDBETTER: Object. It's a  
13 compound question. It has more moving  
14 parts than --

15 A. Correct.

16 Q. Thank you. And you did not contact Dr.  
17 Paidipalli, correct?

18 A. Correct.

19 Q. You never contacted Dr. Clemons either  
20 after he left the bedside in the five minutes  
21 that he was there, correct?

22 A. Correct.

23 Q. Now, Mr. Ledbetter asked you some  
24 questions about a chart that he showed you, and